

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WALTER F. SCOTT,)
)
Plaintiff,)
)
v.) No. 4:03-CV-1160 CAS
)
MCNEARNEY & ASSOCIATES, LLC, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for relief pursuant to Federal Rule of Civil Procedure 60(a),(b)(2) from the Court's judgment in favor of defendants McNearney & Associates, LLC and Centex Home Equity Company, LLC. Defendants McNearney & Associates, LLC and Centex Home Equity filed responses in opposition to plaintiff's motion. For the following reasons, plaintiff's motion will be denied.

Rule 60(a) allows the court to correct clerical mistakes in judgments. Fed. R. Civ. P. 60(a) (court may correct mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission). Plaintiff has not shown any clerical mistakes in the judgment or other orders in this case that he believes should be corrected. Therefore, plaintiff's motion pursuant to Fed. R. Civ. P. 60(a) will be denied.

Federal Rule of Civil Procedure 60(b)(2) relieves a party from a final judgment or order based on newly-discovered evidence which by due diligence could not have been discovered in time for a Rule 59(e) motion. To prevail on a motion under 60(b)(2), the movant must show that (i) the evidence was discovered after trial; (ii) the party exercised due diligence to discover the evidence before the end of trial; (iii) the evidence is material and not merely cumulative or impeaching; and (iv)

a new trial considering the evidence would probably produce a different result. Schwieger v. Farm Bureau Ins. Co. of Neb., 207 F.3d 480, 487 (8th Cir. 2000).

Plaintiff's motion simply reargues the merits of his case. Plaintiff has not presented any new evidence. Rule 60(b) authorizes relief based on certain enumerated circumstances. "It is not a vehicle for simple reargument on the merits." Broadway v. Norris, 193 F.3d 987, 990 (8th Cir. 1999). Therefore, plaintiff's motion pursuant to Rule 60(b)(2) will be denied.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for relief is **DENIED**. [Doc. 145]



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 17th day of May, 2005.